

# FINAL REGULATIONS

For information concerning Final Regulations, see Information Page.

## Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a change from the proposed text of the regulation.

**REGISTRAR'S NOTICE:** The following regulatory action is exempt from the Administrative Process Act in accordance with (i) § 2.2-4006 A 2 of the Code of Virginia, which excludes regulations that establish or prescribe agency organization internal practice or procedures, including delegations of authority and (ii) § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Department of Criminal Justice Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: ~~1 VAC 30-90. 6 VAC 20-220.~~  
**Regulations for the Approval of Field Tests for Detection of Drugs (adding 6 VAC 20-220-10 through 6 VAC 20-220-80).**

Statutory Authority: § 9.1-102 of the Code of Virginia.

Effective Date: December 3, 2003.

### Summary:

*The 1996 Acts of the Assembly amended § 9-196.1 of the Code of Virginia (recodified in 2001 to § 9.1-117) by moving the Division of Forensic Science from the Department of General Services to the Department of Criminal Justice Services. Therefore, the Virginia Administrative Code numbers are being changed to reflect this transfer. The amendments also update internal practice and procedures used by the division in approving the field test kits for the detection of drugs.*

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## CHAPTER ~~90~~ 220.

### REGULATIONS FOR THE APPROVAL OF FIELD TESTS FOR DETECTION OF DRUGS.

#### PART I. DEFINITIONS.

#### ~~1 VAC 30-90-10.~~ 6 VAC 20-220-10. Definitions.

The following words and terms, when used in this chapter, shall have following meanings unless the context clearly indicates otherwise:

"Agency" means any federal, state or local government law-enforcement organization in the Commonwealth.

"Approval authority" means the Director of the Division of Forensic Science or designee.

"Division" means the Division of Forensic Science, Department of ~~General~~ Criminal Justice Services.

"Drug" means any controlled substance, imitation controlled substance, or marijuana, as defined in § 18.2-247 of the Code of Virginia.

"Field test" means any presumptive chemical test unit used outside of a chemical laboratory environment to detect the presence of a drug.

"Field test kit" means a combination of individual field tests units.

"List of approved field tests" means a list of field tests or field test kits approved by the division for use by law-enforcement agencies in the Commonwealth and periodically published by the division in the Virginia Register of Regulations in accordance with § 19.2-188.1 of the Code of Virginia.

"Manufacturer" means any entity which makes or assembles field test units or field test kits to be used by any law-enforcement officer or agency in the Commonwealth for the purpose of detecting a drug.

"Manufacturers' instructions and claims" means those testing procedures, requirements, instructions, precautions and proposed conclusions which are published by the manufacturer and supplied with the field tests or field test kits.

"Street drug preparations" means any drug or combination of drugs and any other substance which has been encountered or is likely to be encountered by a law-enforcement officer as a purported drug in the Commonwealth.

#### PART II.

#### PROCESS FOR APPROVAL OF FIELD TESTS.

#### ~~1 VAC 30-90-20. Regulations.~~ 6 VAC 20-220-20. Authority for approval.

A. Section 19.2-188.1 of the Code of Virginia provides that the Division of Forensic Science shall approve field tests for use by law-enforcement officers to enable them to testify to the results obtained in any preliminary hearing regarding whether any substance, the identity of which is at issue in such hearing, is a controlled substance, imitation controlled substance, or marijuana, as defined in § 18.2-247 of the Code of Virginia.

#### 6 VAC 20-220-30. Request for approval.

B. A. Any manufacturer who wishes to have field tests or field test kits approved shall submit a written request for approval to the division director at the following address:

Director  
Division of Forensic Science  
~~1 North 14th Street~~ 700 North Fifth Street  
Richmond, VA 23219.

B. Materials sufficient for at least 10 field tests shall be supplied for each drug for which the manufacturer requests approval. The materials shall include all instructions,

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precautions, color charts, flow charts and the like which are provided with the field test or field test kit and which describe the use and interpretation of the tests.

C. The manufacturer shall also include exact specifications as to the chemical composition of all chemicals or reagents used in the field tests. These shall include the volume or weight of the chemicals and the nature of their packaging. *Material Safety Data Sheets for each chemical or reagent shall be sufficient for this purpose.*

D. This approval will require at least 120 days from the receipt of the written request and all needed materials from the manufacturer.

~~C.~~ E. The division will use commonly encountered "street drug preparations" to examine those field tests for approval. In order to be approved, the field test must correctly react in a clearly observable fashion to the naked eye, and perform in accordance with manufacturers' instructions and claims.

**6 VAC 20-220-40. Notice of approval.**

~~D. Upon completion of such testing and in concurrence with the approval authority, a list of approved field tests will be published by the division in the General Notices section of the Virginia Register of Regulations. The division will notify each manufacturer in writing of the approval or disapproval of each test for which approval was requested. Should any test not be approved, the manufacturer may resubmit their request for approval of that field test according to the previously outlined procedures at any time. The division may, in addition, provide copies of its approval list to any agency subject to this chapter. The division may share any information or data developed from this testing with these agencies.~~

**6 VAC 20-220-50. Maintenance of approved status.**

~~E.~~ The division may require that this approval be done as often as annually for routine purposes. If any modifications are made to an approved field test by the manufacturer, the division shall be notified in writing of the changes. If unreported modifications are discovered by the division, the division may require that all testing and approval be repeated for the particular manufacturers' approved field tests at any time. The division shall notify the manufacturer in writing of this requirement. Any modified field test must be approved before it can be used in accordance with § 19.2-188.1 of the Code of Virginia. These changes shall include, but are not limited to any chemical, procedural or instructional modifications made to the field test.

**6 VAC 20-220-60. Publication.**

*Upon completion of such testing and in concurrence with the approval authority, the division will periodically publish a list of approved field tests in the General Notices section of the Virginia Register of Regulations. The division will also periodically publish the list on its website. The division may, in addition, provide copies of its approved list to any agency subject to this chapter. The division may share any information or data developed from this testing with these agencies.*

**6 VAC 20-220-70. Liability.**

~~F.~~ A. The division assumes no liability as to the safety of these field tests or field test kits, any chemicals contained therein or the procedures and instructions by which they are used.

B. The division further assumes no responsibility for any incorrect results or interpretations obtained from these inherently tentative presumptive chemical tests.

**PART III.  
FEES.**

**~~4 VAC 30-90-30.~~ 6 VAC 20-220-80. Fees.**

Manufacturers will be charged a fee of \$50 for each drug or type of drug for which individual approval is requested. The division will evaluate the manufacturers' request and notify them in writing of the amount due before testing begins. Manufacturers who wish to withdraw a request for approval shall immediately notify the division in writing. The division's assessment of the amount of payment required will be based upon a detailed evaluation of the manufacturer's request and that amount will be final. Approval will not be granted before full payment is made to the Treasurer of Virginia.

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